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No. 97-

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1997

LEONARD VINCI,

Petitioner,

v.

WASTE MANAGEMENT, INC., an Illinois corporation;
WASTE MANAGEMENT OF ALAMEDA COUNTY,

Respondents.

Petition for a Writ of Certiorari to the
SUPREME COURT OF THE UNITED STATES

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Does a former absorbed competitor turned employee have standing to sue under the antitrust laws when he is wrongfully discharged for disobeying his superior's order to become the Company's leading predatory agent in destroying the only remaining large independent in the San Francisco Bay Area, to complete the Company's monopolization of garbage disposal in that area?

2. Does an employee discharged for refusal to engage in the anticompetitive behavior have standing to sue where he admittedly brought the scheme to destroy the only remaining independent garbage company to the attention of the targeted company and thus averted the contemplated takeover?

3. Do not the circumstances in this case clearly favor standing within the five-part standing test of *Associated General Contractors v. California Council of Carpenters*, 459 U.S. 519 (1983)?

4. Does not the Ninth Circuit's broad statement that generally employees do not have standing to sue under the antitrust laws contradict this Court's seminal decision in *Radovich v. National Football League*, 352 U.S. 445 (1957) and the numerous cases that have followed it, as well as the ancient English cases which established the common law against restraints of trade and monopolies?

PARTIES TO THE PROCEEDINGS

Respondent, which was the defendant below, is Waste Management, Inc., the country's largest garbage collection company. Petitioner, who was the plaintiff below, is Leonard Vinci, a pioneer recycler in the San Francisco Bay Area, who competed with Waste management, Inc. until his recycling facility was taken over by Waste Management, and he became an employee thereof.

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Petitioner Leonard Vinci hereby petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case.

OPINION BELOW

The opinion of the Court of Appeals is appended hereto as Exhibit A.

JURISDICTION

The judgment of the Court of Appeals is dated April 10, 1996. A petition for rehearing and for an *en banc* hearing to resolve the apparent contradiction with the Ninth Circuit's own decision in *Ostrofe v. H.S. Crocker Co.*, 740 F.2d 739 was denied on October 4, 1996. That denial is attached hereto as Appendix B.

Jurisdiction in the district Court was premised upon 28 U.S.C. §§ 1331 and 1337. Jurisdiction in this Court is based upon 28 U.S.C. § 1254(1).

STATUTES INVOLVED

Section of the Sherman Act (15 U.S.C. §1) provides in pertinent part:

> "Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several states, or with foreign nations, is declared to be illegal."

Section 2 of the Sherman Act (15 U.S.C. §2) provides in pertinent part:

> "Every person who shall monopolize, or attempt to monopolize, or combine or

> conspire with any other person or persons, to monopolize any part of the trade or commerce among the several states, or with foreign nations, shall be deemed guilty of a felony. . ."

STATEMENT OF THE CASE

Petitioner Leonard Vinci became an employee of Respondent Waster Management, Inc. when Respondent acquired his pioneer recycling business. Vinci previously operated and wholly owned Vinci Enterprises, a competitor of Waste management in the recycling market. Vinci claimed that Waste Management was attempting to monopolize garbage collection and recycling by acquiring competitors and by engaging in predatory pricing. The monopolization would have been virtually complete if Waste Management could take over the San Francisco garbage collection company. Vinci alleged that he was ordered to implement a plan to damage and weaken the San Francisco company by predatory bidding sufficient to permit Waste Management to acquire the company at a distress price - a pattern he alleges was followed to make a series of acquisitions around the Bay Area. Acquisition of the San Francisco garbage company would have completed the circle. Vinci, who had long time friends and acquaintances in the San Francisco company disobeyed an order to engineer its destruction and was fired for that refusal with the terse comment by his boss, "If you don't have the stomach to do this, we'll get somebody who does." The plan to complete the circle around San Francisco Bay was frustrated when Vinci informed the San Francisco company of the reason for his firing, and then brought suit against Waste Management under the antitrust laws.

The case was dismissed by the District Court which specifically decided not to follow the Ninth Circuit's decision in *Ostrofe v. H.S. Crocker, Co.* 740 F.2d 739 and opted instead for the Seventh Circuit's contrary decision in *Bichan v. Chemetron Corp.*, 681 F.2d 514. The Seventh Circuit's decision came after *Ostrofe I*, but before the Ninth Circuit's reexamination in the light of *Associated General Contractors*.

With a certain degree of confidence, Vinci appealed to the Ninth Circuit contending that the District Court was bound to follow *Ostrofe* and not *Bichan*. That confidence was soon dashed in the decision, from which we seek certiorari, when the Court eviscerated *Ostrofe* without formally overruling it.

Petitioner contends that Judge Browning's evaluation of *Ostrofe* in the light of *Associated General Contractors* is correct, is logical and affords an otherwise wasted substantial opportunity to expose violations of secret antitrust plans which otherwise would go undebted.

Ostrofe, before its reexamination, is found at 670 F.2d 1334 and after its reexamination at 740 F.2d 740.

The *Vinci* case was dismissed on the pleadings and its affirmance on appeal looked only to the pleadings. Thus, an opportunity to clarify the tangled web of standing decisions in the federal court - they are all over the lot - presents itself in this petition.

This Court has addressed the concept of antitrust standing several times. Nevertheless, the federal appellate courts have split on the issue of whether an employee discharged for refusal to further an antitrust conspiracy has standing under the antitrust laws. (*Ostrofe* as against *Bichan, supra.*) Because of this split, the lower federal courts are in disarray, often coming to opposite conclusions in the same circumstances.

For example, federal cases allowing standing, see:

Ashmore v. Northeast Petroleum, 843 F.Supp. 759, 772 (D., Me. 1994); *Donahue v. Pendleton Woolen Mills*, 633 F.Supp. 1423, 1439 (S.D.N.Y. 1986); *Shaw v. Russell Trucking*, 542 F.Supp. 776, 781 (W.D. Pa. 1982).

For further example, federal cases denying standing in factually similar cases, see:

Boisjoli v. Morton, Inc. 706 F.Supp. 794, 804 (N.D. Utah, 1988); *Thomason v. Mitsubishi*, 701 F.Supp. 1563, 1570 (N.D. Ga., 1988); *Reitz v. Canon*, 695 F.Supp. 552, 554 (S.D. Fla., 1988); *Winter v. DEC*, 625 F.Supp. 100, 103 (D. Colo. 1985); *Callahan v. Scott Paper*, 541 F.Supp. 540, 551, 561 (E.D. Pa. 1988).

These contradictory results on similar facts do not enhance the image of the law, and leave the lower federal courts in a quandry even after *McCready* (*Blue Shield of Virginia v. McCready*, 457 U.S. 465, 482 (1982)) and *Associated General Contractors* had illuminated the issue. Indeed, the confusion has led different judges in the same

California District Court to contradictory opinions. Cf. *Gonsalves v. Kaiser Sand*, No. C92 3561 (N.D. Ca., 1993), granting standing with our Vinci case in the District Court denying standing (N.D. Ca., 1994).

These contradictory results before the courts have also generated scholarly comments with vehement advocates on both sides.

ASSOCIATED GENERAL CONTRACTORS SUPPORTS *VINCI*

Even according the Ninth Circuit, a subjective rendering of the five standards of *Associated General Contractors*, it is clear to petitioner that the Court read the Supreme Court restrictively. In *Ostrofe II*, the Court noted that in *Associated General Contractors*, the Supreme Court had reserved the question of whether a direct victim of an antitrust violation who suffers an injury unrelated to antitrust policies can have standing under Section 4. Within this reservation the *Ostrofe* Court allowed standing based on a number of policy questions: (1) the public interest in effective antitrust enforcement; (2) the desirability of encouraging exposure of antitrust violations; (3) the fact that the injury is intentional and caused by the violation; and (4) the avoidance of *Illinois Brick* problems, as the injury is direct, not remote.

Significantly the Supreme Court declined further review of the case. We respectfully request that it now accept the question it specifically reserved.

THE DIFFERENCES ASSIGNED BY THE NINTH CIRCUIT BETWEEN *VINCI* AND *OSTROFE* ARE ILLUSORY

The Ninth Circuit explained in *Vinci* that *Ostrofe* was given standing because "he was the direct victim of a horizontal boycott and because he was the victim of a unilateral discharge by one of the conspirators." It then says: "Vinci does not allege a boycott of his services by conspirators." This is the proverbial difference without a distinction. Vinci clearly alleges that he was hounded out of business and then boycotted by a monopolist. There is no distinction between a boycott by a monopolist and a boycott by a conspirator. It's just a matter of whether the violation involves Section 1 or Section 2 of the Sherman Act. Indeed the more convincing argument is that it is better to be boycotted by one of the conspirators than by a monopolist or a near monopolist, because there are more persons left to relent.

Moreover, the Court invented the idea that Ostrofe was an "essential participant" in the conspiracy. Agents willing to attend price-fixing meetings are hardly in short supply. When Vinci's boss declared "If you don't have the stomach to do this, we'll find somebody who does" thus could very well have been said or implied to Ostrofe. The further invention at page 4506 of the opinion that "there was no one else [other than Ostrofe] with as strong an incentive to vindicate the public interest in antitrust enforcement" simply belies the record. The *Ostrofe* decision states explicitly that the Department of Justice had filed both criminal and civil suits against the defendants. And it's not much of a secret to respondent's lawyers that Ostrofe's lawyers had filed damage actions on behalf of the buyers of labels before they filed for Ostrofe.

The attempts to distinguish the facts in *Ostrofe* as against the pleaded facts in Vinci are simply unrealistic and contradicted by the pleaded facts in *Vinci*, which must of course be accepted as true for the purposes of this decision. *Ostrofe* examined the facts in relation to this court's decision in *Associated General Contractors*. Its analysis accords with that decision, and fully covers the pleaded facts in *Vinci*.

THE CIRCUIT'S DECISION DID NOT ACCORD VINCI HIS RIGHTS UNDER STANDARDS APPLICABLE TO DISMISSAL ON THE PLEADINGS

The allegations of Vinci's complaint must of course be accepted as true and a complaint may not be dismissed under Rule 12 unless there is no reasonable legal basis for a recovery. He was the pioneer recycler in the Bay Area and had built a state-of-the-art plant and collection system. He operated under a wholly-owned corporation known as Vinci Enterprises, Inc. that company, according to the allegations, was put out of business and forced into bankruptcy by Waste management's anticompetitive acts, which thereafter acquired it and hired Vinci as an employee, leading to his termination for refusing to do their dirty work.

The complaint alleged that the actions against Vinci Enterprises, Inc. and Vinci were for the specific purpose of eliminating Vinci personally as a competitor in the recycling business. He was a personal party to the settlement agreements that effectively was used in its breach to render the company insolvent and lead to its acquisition by the respondent. These facts are set forth in the opinion of the Ninth Circuit

taken from the complaint. Plaintiff should have been given an opportunity to prove them for the jury questions they raised. Instead, the Court held that the presence of the bankrupt corporation shielded Respondent for its intended acts to eliminate Vinci personally, and thus compartmentalized the case, segregating the wrongful termination from its natural origins.

REASONS FOR GRANTING THE WRIT

The reasons for granting the writ are as follows:

1. The lower federal courts are in a tangled web of contradictory decisions since *McCready* and *Associated General Contractors*. The question presented here was specifically reserved by this Court in *Associated*.

2. The decision below wastes a vast investigative resource of employees fired for refusing to implement antitrust violations on the false ground that employees do not generally have standing under the antitrust laws.

3. A complaint alleging that a monopoly pursued and hounded a recycling competitor out of business personally should not be limited by the fact that one means and method of destroying him was to destroy his wholly-owned corporation under which the state-of-the-art

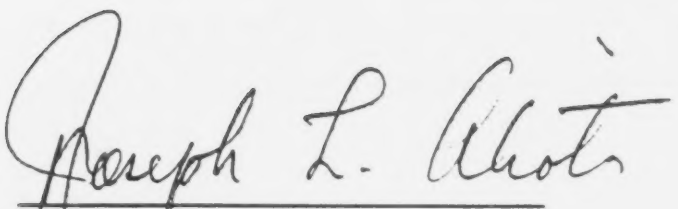
recycling facility operated, and from whose bankruptcy respondent took over the plant.

CONCLUSION

For all of the reasons heretofore stated, the Court should grant this petition for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit.

Respectfully submitted,

LAW OFFICES OF
JOSEPH L. ALIOTO

By: 

Joseph L. Alioto
Attorney for Petitioner
Leonard Vinci

Leonard VINCI, Plaintiff-Appellant,
v.
WASTE MANAGEMENT, INC., an Illinois corporation; Waste Management of Alameda County, Inc., Defendants-Appellees.

No. 95-15000.

United States Court of Appeals,
Ninth Circuit.

Argued and Submitted March 13, 1996.

Decided April 10, 1996.

Former employee of waste removal corporation brought action against former employer under Clayton Act, alleging that employer had terminated him for refusing to engage in anticompetitive schemes, and that, prior to hiring him, employer had engaged in anticompetitive behavior against corporation owned and operated by him. The United States District Court for the Northern District of California, Fern M. Smith, J., 1994 WL 478163, dismissed complaint on ground of lack of standing. Employee appealed. The Court of Appeals, Beezer, Circuit Judge, held that: (1) alleged injury to employee's corporation did not provide employee with standing to sue under Clayton Act, and (2) employee did not have standing to sue under Clayton Act based on allegation that employer terminated employee for refusing to participate in anticompetitive behavior.

Affirmed.

[1] FEDERAL COURTS k776
170Bk776
Court of Appeals reviews dismissal for failure to state claim de novo. Fed.Rules Civ.Proc.Rule 12(b)(6), 28 U.S.C.A.

[2] FEDERAL COURTS k776
170Bk776
Court of Appeals reviews questions of standing de novo.

[3] FEDERAL COURTS k794
170Bk794
In reviewing dismissal for failure to state claim, Court of Appeals takes all allegations of material fact as true and construes them in light most favorable to nonmoving party. Fed.Rules Civ.Proc.Rule 12(b)(6), 28 U.S.C.A.

[4] MONOPOLIES k28(1.6)
265k28(1.6)
In Clayton Act action, district court was not required to determine whether employee's combined status as shareholder and dismissed employee of employer was enough to provide standing; district court properly divided standing issue into two sub-issues of whether employee had standing as shareholder and whether he had standing as dismissed employee. Clayton Act, § 4, 15 U.S.C.A. § 15.

[5] MONOPOLIES k28(1.4)
265k28(1.4)
Factors that should be considered on case-by-case basis in determining whether plaintiff is proper party to bring antitrust action include: (1) motive of defendant, that is, whether it specifically intended to cause plaintiff's harm; (2) nature of plaintiff's injury, that is, whether it was of type the antitrust laws were designed to prevent; (3) directness of causal connection between violation and injury; (4) extent to which abstract speculation underlies allegations of injury and of their causation by defendant's antitrust violations; and (5) risk of duplicate recoveries or complex apportionment of damages if plaintiffs such as this are permitted to recover. Clayton Act, § 4, 15 U.S.C.A. § 15.

[5] MONOPOLIES k28(1.6)
265k28(1.6)
Factors that should be considered on case-by-case basis in determining whether plaintiff is proper party to bring antitrust action include: (1) motive of defendant, that is, whether it specifically intended to cause plaintiff's harm; (2) nature of plaintiff's injury, that is, whether it was of type the antitrust laws were designed to prevent; (3) directness of causal connection between violation and injury; (4) extent to which abstract speculation underlies allegations of injury and of their causation by defendant's antitrust violations; and (5) risk of duplicate recoveries or complex apportionment of damages if plaintiffs such as this are permitted to recover. Clayton Act, § 4, 15 U.S.C.A. § 15.

[6] MONOPOLIES k28(1.4)
265k28(1.4)
Alleged injury to corporation due to second corporation's alleged anticompetitive behavior did not provide shareholder of first corporation with standing to sue under Clayton Act. Clayton Act, § 4, 15 U.S.C.A. § 15.

[6] MONOPOLIES k28(1.6)
265k28(1.6)
Alleged injury to corporation due to second corporation's alleged anticompetitive behavior did not provide shareholder of first corporation with standing to sue under Clayton Act. Clayton Act, § 4, 15 U.S.C.A. § 15.

[7] MONOPOLIES k28(1.6)
265k28(1.6)
Rule, that shareholder of corporation injured by antitrust violations has no standing to sue in his or her own name, applies even if injured shareholder is sole shareholder, or if shareholder alleges that antitrust violations were intended to drive individual out of industry. Clayton Act, § 4, 15 U.S.C.A. § 15.

[8] MONOPOLIES k28(1.6)
265k28(1.6)
Former employee did not have standing, based on allegation that employer eliminated his job because he refused to participate in anticompetitive behavior, to sue employer under Clayton Act; employee was neither competitor nor consumer in relevant market, employee did not allege facts suggesting that he was essential to alleged antitrust scheme or that his termination was necessary to accomplish alleged scheme, and corporations which were direct victims of alleged anticompetitive behavior had greater incentive than employee to challenge such behavior. Clayton Act, § 4, 15 U.S.C.A. § 15.

[9] MONOPOLIES k28(1.4)
265k28(1.4)
Loss of job is not type of injury that antitrust laws were designed to prevent. Clayton Act, § 4, 15 U.S.C.A. § 15.

[10] MONOPOLIES k10
265k10

Antitrust laws are intended to preserve competition for benefit of consumers in market in which competition occurs. Clayton Act, § 4, 15 U.S.C.A. § 15.

[11] MONOPOLIES k28(1.6)
265k28(1.6)
Requirement for standing to sue under antitrust laws, that alleged injury be related to anti-competitive behavior, requires, as corollary, that injured party be participant in same market as alleged malefactors. Clayton Act, § 4, 15 U.S.C.A. § 15.

[12] MONOPOLIES k28(1.4)
265k28(1.4)
Plaintiff who is neither competitor nor consumer in relevant market does not suffer antitrust injury. Clayton Act, § 4, 15 U.S.C.A. § 15.

[13] MONOPOLIES k28(1.6)
265k28(1.6)
Exception of Ostrofe v. H.S. Crocker Co., to rule that dismissed employee does not have standing to sue former employee for antitrust injury, is limited to those cases in which dismissed employee is essential participant in antitrust scheme, dismissal is necessary means to accomplish scheme, and employee has the greatest incentive to challenge antitrust violation. Clayton Act, § 4, 15 U.S.C.A. § 15.
*1373 Joseph L. Alioto, Law Offices of Joseph L. Alioto, San Francisco, California, for plaintiff-appellant.

Alfred C. Pfeiffer, Jr., and Frank M. Hinman, McCutchen, Doyle, Brown & Enersen, San Francisco, California, for defendants-appellees.

Appeal from the United States District Court for the Northern District of California, Fern M. Smith, District Judge, Presiding. No. CV-94-01946-FMS.

Before CHOY, BEEZER and HAWKINS, Circuit Judges.

BEEZER, Circuit Judge:

Leonard Vinci appeals the district court's dismissal of his complaint for lack of standing. Vinci contends that, as a dismissed employee of Waste Management, Inc., he has standing under the Clayton Act, 15 U.S.C. §

15, to sue for damages for injuries resulting from an alleged violation of the Sherman Act, 15 U.S.C. §§ 1 and 2, by Waste Management, Inc. and its subsidiary, Waste Management of Alameda County, Inc. (collectively, "Waste Management"). We have jurisdiction pursuant to 28 U.S.C. § 1291. We affirm.

I

Leonard Vinci owned and operated Vinci Enterprises, Inc. ("VEI"), a waste recycling business. In 1989, VEI entered into a settlement agreement with Waste Management to settle a lawsuit against Oakland Scavenger Company alleging anti-competitive behavior. Oakland Scavenger was acquired by Waste Management while the lawsuit was pending. The settlement agreement required Waste Management to provide VEI with recyclable materials to operate its plant.

Vinci alleges that Waste Management breached the settlement agreement with the purpose of driving VEI out of business. Vinci alleges that Waste Management did this *1374 by, among other things, encouraging other recycling haulers to acquire accounts that VEI desired from Waste Management, refusing to deliver accounts to VEI, and intercepting materials en route to VEI's recycling facility. Thereafter, Waste Management acquired VEI's recycling plant and hired Vinci as its employee.

During his employment with Waste Management, Vinci alleges that senior management asked him to cooperate in anti-competitive schemes. These included a plan to drive Richard Valle, a joint venturer, out of business and a plan to engage in predatory price competition against Norcal, Inc. with the intent to ultimately acquire Norcal at a distressed price. On December 2, 1992, Waste Management fired Vinci. Vinci alleges that he was terminated because he refused to engage in the anti-competitive schemes.

On January 12, 1994, Vinci filed suit in California Superior Court alleging anti-competitive actions in violation of the California Cartwright Act. Cal. Bus. & Prof. Code §§ 16700-16770. Vinci's complaint was dismissed for lack of standing. [FN1] Vinci then filed the present

lawsuit under section 4 of the Clayton Act. 15 U.S.C. § 15. The lawsuit alleges that the same anti- competitive actions violated sections 1 and 2 of the Sherman Act. 15 U.S.C. §§ 1, 2.

FN1. The dismissal was affirmed by the California Court of Appeal in Vinci v. Waste Management, Inc., 36 Cal.App.4th 1811, 43 Cal.Rptr.2d 337 (1995).

The district court dismissed Vinci's first amended complaint with prejudice pursuant to Federal Rule of Civil Procedure 12(b)(6). The district court reasoned that Vinci lacked standing under the Clayton Act to challenge the alleged anti-competitive acts engaged in by Waste Management. The court concluded that Vinci did not have standing to challenge the actions taken against VEI because the injury was to the corporation, not to Vinci as shareholder. The court also concluded that Vinci lacked standing to challenge his termination by Waste Management because Vinci failed to come within an exception to the general rule that a terminated employee may not sue his corporate employer under the Clayton Act.

II

[1][2][3] We review de novo a dismissal for failure to state a claim. Barrus v. Sylvania, 55 F.3d 468, 469 (9th Cir.1995). In addition, we review de novo questions of standing. Id. In reviewing the dismissal for failure to state a claim, all allegations of material fact are taken as true and construed in the light most favorable to the nonmoving party. National Wildlife Fed'n v. Espy, 45 F.3d 1337, 1340 (9th Cir.1995).

III

[4] Vinci first argues that the district court erred because it did not view his allegations as a whole. He argues that the court should not have divided the standing issue into the two sub-issues whether he had standing as a shareholder and whether he had standing as a dismissed employee. Instead, he argues, the district court should have determined whether his combined status as both shareholder and dismissed employee was enough to provide standing. Vinci cites Continental Ore Co. v. Union Carbide & Carbon Corp., 370 U.S. 690, 698, 82 S.Ct. 1404,

1409-10, 8 L.Ed.2d 777 (1962) for the proposition that allegations must be viewed as a whole and should not be compartmentalized.

Vinci misreads Continental Ore. Continental Ore holds that substantive allegations of conspiratorial antitrust behavior should be considered as a whole. This proposition does not apply to the issue whether a person has standing to challenge antitrust behavior. The district court considered the alleged antitrust behavior, and then determined if Vinci had standing to challenge it. The district court examined all the possible theories of standing, of which there were two. The district court was obliged to consider both possibilities, and it did so. It did not err.

IV

Vinci next contends that the district court erred in determining that he did not have standing to sue under section 4 of the Clayton *1375 Act. [FN2] Section 4 provides that "any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefor ... and shall recover threefold the damages by him sustained ...." 15 U.S.C. § 15.

FN2. In a separate argument, Vinci argues that he should have been found to have standing under section 16 of the Clayton Act. 15 U.S.C. § 26. Vinci's argument is fallacious. Vinci's complaint does not mention section 16. It states "[t]hese proceedings are brought under the provisions of Section 4 of the Clayton Act." In addition, section 16 provides for "injunctive relief against threatened conduct," and Vinci did not seek any such remedy.

[5] Although section 4 appears quite broad, it has been read more narrowly by the courts. In Associated General Contractors of California v. California State Council of Carpenters, 459 U.S. 519, 535 n. 31, 103 S.Ct. 897, 907 n. 31, 74 L.Ed.2d 723 (1983), the Supreme Court held that in determining whether a plaintiff has antitrust standing, "[h]arm to the antitrust plaintiff is sufficient to satisfy the constitutional standing requirement of injury in fact, but the court must make a further determination whether the plaintiff is a proper party to bring a private antitrust action." The Court explained that there is not "a black-letter rule that will dictate the result in every case," but there are several

factors that should be considered on a case-by-case basis. Id. at 536-45, 103 S.Ct. at 907-12. These factors include:

(1) the motive of the defendant--whether it specifically intended to cause plaintiff's harm; (2) the nature of plaintiff's injury--whether it was of a type the antitrust laws were designed to prevent; (3) the directness of the causal connection between the violation and the injury; (4) the extent to which abstract speculation underlies the allegations of injury and of their causation by defendant's antitrust violations; and (5) the risk of duplicate recoveries or complex apportionment of damages if plaintiffs such as this are permitted to recover.

Los Angeles Memorial Coliseum Comm'n v. National Football League, 791 F.2d 1356, 1363 (9th Cir.1986) (citing Associated Gen. Contractors, 459 U.S. at 537-45, 103 S.Ct. at 908-12), cert. denied, 484 U.S. 826, 108 S.Ct. 92, 98 L.Ed.2d 53 (1987).

Vinci argues that he has standing because he suffered injury as a result of anti-competitive behavior by Waste Management. Vinci, in general, complains that he was driven out of the recycling business. More specifically, Vinci complains of two injuries: (1) damage to VEI and (2) his termination by Waste Management.

A

[6][7] First, Vinci complains that his recycling business was damaged by Waste Management's alleged breach of its settlement agreement and anti- competitive behavior. Such an injury to VEI does not provide Vinci, as a shareholder in VEI, standing to sue. "A shareholder of a corporation injured by antitrust violations has no standing to sue in his or her own name...." Solinger v. A. & M. Records, Inc., 718 F.2d 298, 299 (9th Cir.1983). This rule applies even if the injured shareholder is the sole shareholder, Sherman v. British Leyland Motors, Ltd., 601 F.2d 429, 439 (9th Cir.1979), or if the shareholder alleges that the antitrust violations were intended to drive the individual out of the industry. Stein v. United Artists Corp., 691 F.2d 885, 897 (9th Cir.1982). "If shareholders were permitted to recover their losses directly, there would be the possibility of a double recovery, once by the shareholder and again by the corporation." Id. at 896-97.

B

[8] Second, Vinci complains that he was injured when his job with Waste Management was eliminated because he allegedly refused to participate in anti- competitive behavior. Vinci argues that our holding in Ostrofe v. H.S. Crocker Co., 740 F.2d 739 (9th Cir.1984) ("Ostrofe II "), [FN3] cert. dismissed, 469 U.S. 1200, 105 S.Ct. 1155, 84 L.Ed.2d 309 (1985) compels a finding of standing for employees *1376 terminated for refusing to participate in anti-competitive behavior. We disagree.

FN3. The Supreme Court vacated the judgment in Ostrofe v. H.S. Crocker Co., 670 F.2d 1378 (9th Cir.1982) ("Ostrofe I ") and remanded for further consideration in light of Associated Gen. Contractors, 459 U.S. 519, 103 S.Ct. 897.

[9][10][11][12] The loss of a job is not the type of injury that the antitrust laws were designed to prevent. "The antitrust laws are intended to preserve competition for the benefit of consumers in the market in which competition occurs." In re Ins. Antitrust Litig., 938 F.2d 919, 926 (9th Cir.1991), rev'd in part on other grounds, 509 U.S. 764, 113 S.Ct. 2891, 125 L.Ed.2d 612, and cert. denied, — U.S. —, 113 S.Ct. 3034, 125 L.Ed.2d 721 (1993). "The requirement that the alleged injury be related to anti- competitive behavior requires, as a corollary, that the injured party be a participant in the same market as the alleged malefactors." Bhan v. NME Hospitals, Inc., 772 F.2d 1467, 1470 (9th Cir.1985). "[A] plaintiff who is 'neither a competitor nor a consumer' in the relevant market does not suffer 'antitrust injury.' " In re Ins. Antitrust Litig., 938 F.2d at 926 (quoting R.C. Dick Geothermal Corp. v. Thermogenics, Inc., 890 F.2d 139, 148 (9th Cir.1989)). Vinci was neither a competitor nor a consumer. His termination was not an antitrust injury. Furthermore, as for any antitrust injuries suffered by Valle or Norcal, Vinci is not the proper plaintiff to bring suit; Valle and Norcal are.

Although antitrust standing is generally limited to customers and competitors, in Ostrofe II we recognized that a dismissed employee had antitrust standing. 740 F.2d at 740. Contra Feeney v. Chamberlain Mfg. Corp., 831 F.2d 93, 95-96 (5th Cir.1987) (holding dismissed employee lacked standing under section 4 of the Clayton Act); Gregory Mktg. Corp. v. Wakefern Food Corp., 787 F.2d 92, 96 (3d Cir.)

(rejecting rationale of Ostrofe II), cert. denied, 479 U.S. 821, 107 S.Ct. 87, 93 L.Ed.2d 40 (1986); In re Indus. Gas Antitrust Litig., 681 F.2d 514, 519 (7th Cir.1982) (rejecting Ostrofe I holding and adopting Judge Kennedy's dissent in same), cert. denied, 460 U.S. 1016, 103 S.Ct. 1261, 75 L.Ed.2d 487 (1983). In Ostrofe II, a sales manager of a label manufacturing company was fired after he refused to cooperate in a price-fixing conspiracy, and he was subsequently boycotted from employment by the conspirators. 740 F.2d at 742. We found that he had standing both because he was the direct victim of a horizontal boycott and because he was the victim of a unilateral discharge by one of the conspirators. Id. at 742-48.

Vinci does not allege a boycott of his services by conspirators. He argues instead that Ostrofe II stands for the proposition that an employee who refuses to participate in anti-competitive behavior and is terminated as a result has antitrust standing. Vinci reads Ostrofe II much too broadly.

Ostrofe II recognized a limited exception to the general rule that a terminated employee lacks antitrust standing. In Ostrofe II, we held that Ostrofe had standing to challenge a price-fixing conspiracy in the market for labels because Ostrofe was more than merely injured by his termination. Ostrofe was an "essential participant" in the price-fixing scheme, and the scheme "could not succeed without his active cooperation." Id. at 745-46. When he refused to participate, "his discharge was a necessary means to achieve the conspirators' illegal end as well as an integral and inextricable part of the anticompetitive scheme." Id. Furthermore, because the anti-competitive behavior alleged was a price-fixing conspiracy, there was "no one else with as strong an incentive 'to vindicate the public interest in antitrust enforcement.' " Id. (quoting Associated Gen. Contractors, 459 U.S. at 542, 103 S.Ct. at 910-11).

[13] The exception recognized in Ostrofe II is limited to those cases in which a dismissed employee is an "essential participant" in an antitrust scheme, the dismissal is a "necessary means" to accomplish the scheme, and the employee has the greatest incentive to challenge the antitrust violation. Cf. Exhibitors' Serv., Inc. v. American Multi-Cinema, Inc., 788 F.2d 574, 580 (9th Cir.1986) (holding that under Ostrofe II dismissed licensing agent corporation did not have antitrust standing to challenge splitting agreement between motion picture exhibitors because

not essential participant in scheme and dismissal was not necessary to accomplish scheme). Vinci does not fall within this exception. Vinci did not allege any facts which suggest that he was essential to the *1377 alleged antitrust scheme or that his termination was necessary to accomplish the scheme. Furthermore, Valle and Norcal have a greater incentive as direct victims to challenge any antitrust acts in which Waste Management allegedly engaged.

V

Vinci, as a shareholder in VEI, did not have standing to challenge alleged anti-competitive actions taken against VEI. Vinci also did not have standing as a dismissed employee. He was neither a competitor nor a customer, and he did not fall within the Ostrofe II exception.

AFFIRMED.